

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 9, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1601

Introduced by Senator Lowenthal

February 24, 2006

An act to add Section 40724.8 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1601, as amended, Lowenthal. Air pollution: marine ports: emissions.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law also designates the State Air Resources Board as the state entity responsible for the coordination and review of all levels of government in their efforts to control air pollution. Existing law requires the state board to adopt standards of ambient air quality for each air basin. Existing state board regulations designate specified air basins as nonattainment with these standards for fine particulate matter (PM 2.5). Existing law imposes certain restrictions on truck idling at marine terminals and ports.

This bill would require ~~a marine port located in a region designated as nonattainment for PM 2.5 by the state board, as specified,~~ *specified marine ports* to require, as an express condition of any ~~approved~~ new lease or significantly renegotiated existing lease, as defined, *between the marine port and any entity of any part of port property or*

right-of-way that the lessee use best available control technology (BACT) to reduce PM and nitrous oxide (NOx) emissions from specified source categories, *and that the lessee's new or significantly renegotiated leases and contracts with other entities meet the same BACT requirements.* The bill would require ~~a marine port~~ *the marine ports to*, if, despite compliance with the above, NOx or PM emissions at ~~a marine port~~ *particular terminal* continue to increase, ~~to~~ require as an express condition of ~~the any new or significantly renegotiated lease~~ *for that terminal* that the lessee offset any increase with a further reduction in emissions of the same pollutant from operations at the leased property or from other emissions sources at the marine port that are not otherwise required by the bill to be reduced through the use of BACT. This bill would require, on or before June 1, 2007, the state board to provide guidance to each port and its lessees regarding what constitutes BACT by developing BACT guidelines, as specified.

By imposing new duties on local governmental entities that operate ports, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Air pollutants from diesel engines at marine ports can
- 4 significantly affect human health.
- 5 (b) Exhaust fumes from diesel-fueled engines are known to
- 6 cause cancer. A landmark study conducted by the South Coast
- 7 Air Quality Management District, entitled the "Multiple Air
- 8 Toxics Exposure Study II," determined that over 70 percent of
- 9 the cancer risk from air pollution in the South Coast Air Basin is

1 attributable to diesel engine exhaust. The State Air Resources
2 Board has made the same finding relative to the entire state.

3 (c) Diesel engine exhaust is a significant source of particulate
4 matter (PM) emissions. Diesel PM is linked to asthma and other
5 respiratory diseases, and to premature death.

6 (d) Diesel exhaust is also a significant source of emissions of
7 oxides of nitrogen (NO_x), which combine with sunlight to create
8 ground level ozone, or smog. Exposure to smog has recently
9 been connected with decreased lung function growth in children.

10 (e) The State Air Resources Board recently estimated that over
11 the next 15 years polluting activity from operations at
12 California's ports and associated international goods movement
13 will have an aggregate health impact equivalent to approximately
14 two hundred billion dollars (\$200,000,000,000) in present value
15 dollars, including estimated annual health costs of approximately
16 nineteen billion dollars (\$19,000,000,000) related to premature
17 deaths, sixty-seven million dollars (\$67,000,000) related to
18 hospital admissions for respiratory causes, thirty-four million
19 dollars (\$34,000,000) for hospital admissions for cardiovascular
20 causes, one million one hundred thousand dollars (\$1,100,000)
21 related to asthma attacks, two million two hundred thousand
22 dollars (\$2,200,000) related to acute bronchitis, sixty-five million
23 dollars (\$65,000,000) related to work loss days, two hundred
24 thirty million dollars (\$230,000,000) related to restricted activity
25 days, and one hundred million dollars (\$100,000,000) related to
26 school absence days.

27 (f) California's ports are largely located in low-income
28 communities where members of the population are on welfare or
29 other public assistance. Accordingly, the State of California is
30 responsible for a considerable portion of these growing
31 port-related health care costs.

32 (g) In addition, the State of California and its political
33 subdivisions are required, under the federal Clean Air Act, to
34 reach and maintain attainment with national ambient air quality
35 standards. Many regions of California are not in attainment with
36 these standards, including, but not limited to, the South Coast Air
37 Basin and the San Joaquin Valley Air Basin, which have the
38 worst air quality in the nation. Further, many regions are in
39 danger of failing to meet the federal ambient air quality standards
40 by the dates required by the federal Clean Air Act. If a region

1 fails to reach attainment by the applicable deadlines, its residents
2 will continue to be exposed to severe health risks, and the state
3 risks the loss of billions of dollars in federal transportation funds
4 and other potential sanctions.

5 (h) Further, where lessees do not pay the costs of mitigating
6 air pollution from their operations at marine ports, the State of
7 California must cover these substantial expenses in order to
8 reduce health costs and achieve and maintain attainment with the
9 federal standards. For example, the Port of Los Angeles will pay
10 approximately sixty million dollars (\$60,000,000) over a
11 five-year period to clean up air pollution and other impacts from
12 a terminal leased to China Shipping. Because all marine port
13 assets, including revenues, are held in trust for the state and the
14 people of California, the state has an interest in conducting its
15 business operations in such a way as to reduce or eliminate these
16 expenses.

17 (i) Port air pollution is a systematic and statewide problem in
18 that all marine ports are a source of toxic PM pollution, and thus
19 of significant health costs to the state, regardless of the
20 attainment status of the region in which they are located.

21 SEC. 2. Section 40724.8 is added to the Health and Safety
22 Code, to read:

23 40724.8. (a) As used in this section, the following terms have
24 the following meanings, unless the context clearly requires
25 otherwise:

26 (1) “Best available control technology” or “BACT” means the
27 most stringent emission limitation or control technique that meets
28 one of the following criteria:

29 (A) The emission limitation or control technique has been
30 achieved in practice for the category or class of source.

31 (B) The emission limitation or control technique is contained
32 in any state implementation plan approved by the United States
33 Environmental Protection Agency for the category or class of
34 source. A specific limitation or control technique shall not apply
35 if the owner or operator of the proposed source demonstrates to
36 the satisfaction of the executive officer of the applicable air
37 pollution control district, or to the state board, or to a designee,
38 that the limitation or control technique is not presently
39 achievable.

(C) Any other emission limitation or control technique, found by the executive officer of the applicable district or the state board, or by a designee, to be technologically feasible for that class or category of source or for a specific source, and cost effective compared to measures as listed in the air quality management plan or rules adopted by the district board.

(2) *“Marine port” means a marine port that meets all of the following criteria:*

(A) *The marine port’s land is held in trust for the people of California under California tidelands trust law.*

(B) *The marine port is located in a region designated as nonattainment for PM 2.5 by the state board.*

(C) *More than two million tons of cargo are moved annually at the marine port.*

(D) *The marine port processes two million or more containers (20-foot equivalent units (TEUs)) annually.*

~~(2)–~~

(3) *“Significantly renegotiated lease” means any renegotiation or change to a lease to which a marine port, whose land is held in trust for the people of California under California tidelands trust law, has entered into with any entity to lease any part of port property or right of way.*

(b) ~~All marine ports whose land is held in trust for the people of California under California tidelands trust law, and which are located in a region designated as nonattainment for PM 2.5 by the state board,~~ shall require that any new or significantly renegotiated lease ~~existing at these ports include as a~~ *between the marine port and any entity to lease any part of port property or any right-of-way include as an express* condition that the lessee use BACT to reduce PM and NOx emissions from all of the following:

(1) Ocean-going vessels, including, but not limited to, oil tankers, container ships, and cruise ships.

(2) Harbor craft.

(3) Cargo handling equipment.

(4) On-road heavy-duty vehicles.

(5) Locomotives that operate at or service the leased property.

(c) ~~All marine ports whose land is held in trust for the people of California under California tidelands trust law, and which are located in a region designated as nonattainment for PM 2.5 by~~

1 ~~the state board~~, shall require the lessee of a new or significantly
2 renegotiated lease *between the marine port and the lessee of any*
3 *part of port property or any right-of-way* to comply with
4 subdivision (b) for all sources *identified* in subdivision (b)
5 owned, operated, leased, or otherwise used at the marine port by
6 the lessee ~~and by requiring to include~~ the same BACT
7 requirements in all the lessee's new or significantly renegotiated
8 leases or contracts with entities that own or operate any sources
9 identified in subdivision (b) and use any of the property or
10 right-of-way being leased at the marine port.

11 (d) If, despite compliance with subdivision (b), NOx or PM
12 emissions at a particular terminal continue to increase, the marine
13 port shall require, that any new lease or significantly renegotiated
14 existing lease for that terminal include an express condition that
15 the lessee shall offset any increase with a further reduction in
16 emissions of the same pollutant from operations at the leased
17 property or from other emissions sources at the marine port that
18 are not otherwise required by this section to be reduced through
19 the use of BACT.

20 (e) On or before June 1, 2007, the state board shall provide
21 guidance to each port and its lessees regarding what constitutes
22 BACT by developing BACT guidelines relating to PM and NOx
23 emissions from the pollution sources listed in subdivision (b). In
24 addition, the state board shall provide further guidance by
25 identifying those measures that constitute BACT for each source.
26 Every year thereafter, the state board shall update its BACT
27 guidelines and measures for each source category.

28 SEC. 3. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.